IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Surya Systems, Inc.	:	
Plaintiff	:	Civil Action
	:	No. 05-146
v.	:	
	:	
Satish Chandra Sunku & Wipro	:	
Defendants	:	

Memorandum and Order

Yohn, J.   June_____, 2005

Presently before the court is defendants' motion to dismiss the complaint, pursuant to

Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim upon which relief can be

granted. Having carefully reviewed the complaint and considered the parties' briefs, I will grant

the motion in part and deny it in part, for the reasons stated herein.

I. Factual Background and Procedural History

Plaintiff Surya Systems, Inc. ("Surya"), a Georgia corporation with offices in Bristol,

Bucks County, Pennsylvania, is in the business of hiring computer software consultants and

placing them with clients in positions of temporary employment. Defendant Satish Chandra

Sunku ("Sunku") is a former Surya consultant who is now permanently employed in Idaho by

defendant Wipro, Ltd. ("Wipro").[1] On November 1, 2003, Sunku entered into a non-compete and

non-disclosure agreement with Surya. The agreement contains the following non-compete clause:

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[1]The complaint does not identify Wipro's state of incorporation, but avers that Wipro has
a place of business in Mountain View, California, in addition to the facility in Idaho where
Sunku is employed.

In the event of any termination of Consultant's employment, for any reason whatsoever, the Consultant shall not a period of one (1) year from the date of such termination, directly or indirectly, provide service to any Client or any of its subsidiaries or affiliates, whether for compensation or otherwise, where consultant previously provided services to the Client on behalf of the Company.

Complaint, Exhibit A at ¶ 2.

In addition, the agreement contains a non-disclosure clause that incorporates a promise of non-solicitation aimed at protecting Surya's proprietary information:

Therefore, the Consultant agrees that for a period of one (1) year following employment termination (whether voluntary or involuntary and with or without cause), he/she shall not solicit, divert or initiate any contact with (or attempt to solicit, divert or initiate any contact with) any customer, Client, independent contractor or employee of the Company for any commercial or business reason whatsoever.

Id. at ¶ 5.

The agreement also contains a liquidated damages clause, pursuant to which Sunku would be required to pay Surya a sum equal to thirty-five percent of his salary in the event that he were to breach the agreement. *See id.* at ¶ 3.

During the time that Sunku worked as a consultant for Surya, he was placed with Surya's California client Global Infotech, which is itself a provider of temporary staffing. Global Infotech, in turn, placed Sunku as a consultant with its client Wipro. After Sunku's contract placement with Wipro expired, Wipro offered him permanent employment, which he accepted.[2] Subsequent to Wipro's hiring Sunku, Surya contacted Wipro to discuss the non-compete and

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[2]The complaint is silent concerning the dates of Sunku's employment with Surya and the duration of his consulting work for Global Infotech. It is also silent concerning the date on which Sunku accepted employment with Wipro. Because defendants have not alleged that Sunku's dates of employment are in any way dispositive of the legal issues presented in this motion, I will assume for purposes of deciding the motion that Sunku was still bound by the terms of the non-compete with Surya when he accepted permanent employment with Wipro.

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non-disclosure agreement, of which Wipro allegedly already knew. Wipro refused to terminate Sunku's employment, despite Surya's position that termination would be the appropriate remedy under the circumstances.

On January 12, 2005, plaintiff filed suit in this court against Sunku and Wipro for breach of contract, tortious interference with a contract, and *quantum meruit*. Plaintiff alleges that Sunku's acceptance of employment with Wipro constituted a breach of the non-compete and non-disclosure agreement by both defendants; that Wipro's employment of Sunku constituted tortious interference with the agreement by both defendants; and that both defendants have become unjustly enriched by their wrongful conduct, at plaintiff's expense. Defendants then filed the instant motion to dismiss, which has now been fully briefed.

II. Discussion

The purpose of a Rule 12(b)(6) motion is to test the legal sufficiency of the complaint. *Johnsrud v. Carter*, 620 F.2d 29, 33 (3d Cir. 1980) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). In deciding a motion to dismiss under Rule 12(b)(6), the court must "accept as true all allegations in the complaint and all reasonable inferences that can be drawn from them after construing them in the light most favorable to the non-movant." *Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250, 1261 (3d Cir. 1994) (citing *Rocks v. Philadelphia*, 868 F.2d 644, 645 (3d Cir. 1989)). Dismissal of the complaint is not appropriate unless it "is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Jordan*, 20 F.3d at 1261.

Because the agreement at issue in this case contains a choice of law clause in favor of Pennsylvania law, and because neither party disputes that the clause is applicable, I will decide

the motion based on Pennsylvania substantive contract law.

A. Breach of Contract Claim

To satisfy its burden of pleading in a breach of contract claim, plaintiff must, at a minimum, plead facts establishing (1) the existence of a contract, including its essential terms; (2) a breach of contract; and (3) resultant damages. *J. F. Walker Co., Inc. v. Excalibur Oil Grp., Inc.*, 792 A.2d 1269, 1272 (Pa. Super. 2002). The complaint brings a count for breach of contract against both Sunku and Wipro.

Defendants are correct to assert that plaintiff's breach of contract claim cannot lie against Wipro. Wipro was not a party to Surya's agreement with Sunku, and only a party to a contract can be charged with its breach. *See Mid-Continent Ins. Co. v. Packel*, No. 00-3239, 2001 U.S. Dist. LEXIS 24204, at *7-8 (E.D. Pa. October 25, 2001) (invoking the general rule that no person can be sued for breach of contract unless he is a party to the contract). Plaintiff's breach of contract claim against Wipro must therefore be dismissed with prejudice.

Defendants argue that plaintiff has also failed to state a claim for breach of contract against Sunku. They maintain that the complaint is insufficient because it does not allege that Sunku accepted employment from or solicited the business of any Surya client. Plaintiff counters that Sunku's acceptance of employment with Wipro violated the agreement because the agreement prohibited Sunku from accepting employment with indirect as well as direct clients of Surya.[3]

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[3]In the complaint, plaintiff specifically alleges only that Sunku breached the non-solicitation component of the non-disclosure clause, the substance of which plaintiff misrepresents. *See* Complaint at ¶ 9. The non-disclosure clause prohibits "contact with (or attempt to solicit, divert or initiate any contact with) any customer, Client, independent contractor or employee of *the Company*" (i.e., Surya) for a period of one year following

Although the complaint is rather cursory in its allegations, plaintiff has met its burden on

the breach of contract claim against Sunku. Surya has established the first element of a prima

facie claim by alleging that Sunku and Surya entered into a valid non-compete and non-

disclosure agreement, a complete copy of which is incorporated into the complaint. Surya has

established the second element of a prima facie breach of contract claim by alleging that Sunku

breached the terms of the agreement when he accepted permanent employment with Wipro.

Because the non-compete clause bars the consultant from "directly or indirectly provid[ing]

services to any client," and because Sunku's acceptance of employment with Wipro could be

construed to constitute the indirect provision of services to Surya's client Global Infotech, Surya

has sufficiently pled the element of breach with respect to the non-compete clause in the

agreement.[4] Finally, Surya has established the third element of a breach of contract claim by

invoking the liquidated damages clause in the agreement, which provides that the consultant will

pay thirty-five percent of his or her salary in the event of a breach, to compensate Surya for the

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termination. *See* Complaint, Appendix A at ¶ 5 (emphasis added). The complaint, however, characterizes the prohibition on solicitation as one against contact with "any customer, client, independent contractor or employee of *the client*" for a period of one year. Complaint at ¶ 9 (emphasis added). In its brief in opposition to defendants' motion to dismiss, plaintiff cites (and again misquotes) the non-disclosure clause, but it relies, too, on language in the non-compete clause barring the consultant from "directly or indirectly, provid[ing] service to any Client" for a period of one year following the consultant's termination.

[4]Insofar as Surya alleges that Sunku's acceptance of employment with Wipro constituted a breach of the non-solicitation component of the non-disclosure clause, Surya does not establish the element of breach, because the complaint does not allege that Wipro is "a customer, client, independent contractor or employee of the Company" (i.e., Surya). In fact, the complaint alleges no direct relationship whatsoever, contractual or otherwise, between Surya and Wipro. Unlike the non-compete clause, which can be construed to reach third parties with which Surya has only an indirect business relationship, the non-disclosure clause unambiguously applies exclusively to third parties having a direct business relationship with Surya.

loss of business with its client and for the cost of developing its relationship with its client. Whether plaintiff can eventually produce sufficient evidence to prove its breach of contract claim is, of course, a matter for another day.

B. Intentional Interference Claim

Pennsylvania has long recognized a cause of action for interference with an existing contractual relation. *See Total Care Systems, Inc. v. Coons*, 860 F. Supp. 236, 241 (E.D. Pa. 1994). To state a claim of intentional interference with a contract, the plaintiff must plead facts sufficient to establish (1) the existence of a contractual relationship between the plaintiff and a third party; (2) an intent on the part of the defendant to harm the plaintiff by interfering with that contractual relationship; (3) the absence of privilege or justification for the interference; and (4) damages. *See Crivelli v. General Motors Corp.*, 215 F.3d 386, 394 (3d Cir. 2000) (citing *Strickland v. University of Scranton*, 700 A.2d 979, 985 (Pa. Super. 1997)). The complaint brings claims of intentional interference against both Sunku and Wipro.

Defendants rightly assert that a tortious interference claim against Sunku cannot lie, because Sunku was a party to the contract in question and therefore cannot have been a third-party interloper. *See Center for Concept Dev., Ltd. v. Godfrey*, No. 97-7910, 1999 U.S. Dist. LEXIS 3337, at *6-7 (E.D. Pa. March 23, 1999) (citing the established principle that a party to a contract cannot tortiously interfere with its own contract). Plaintiff's tortious interference claim against Sunku must therefore be dismissed with prejudice.

Defendants argue that plaintiff's intentional interference claim against Wipro also must fail because "Surya has not alleged either the breach of a contract or the deprivation of any contractual benefit." Plaintiff argues that it has met its burden, because it has alleged that Sunku

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was bound by the non-compete and non-disclosure agreement when he accepted employment with Wipro, that Wipro knew of the existence of the agreement when it offered Sunku employment, and that Wipro knowingly acted in contravention of the agreement–to Surya's detriment–by hiring Sunku.

Plaintiff has met its burden at this stage with respect to its intentional interference claim against Wipro. Plaintiff has alleged the existence of an agreement between it and Sunku. It has alleged that Wipro extended an offer of employment to Sunku notwithstanding Wipro's knowledge that Sunku was bound by the agreement. It has alleged that Wipro refused to act when directly accused of interfering with the agreement. And it has alleged that it lost profits as a result of the interference. These facts satisfy the elements of the cause of action and are sufficient to defeat defendants' motion to dismiss.

C. *Quantum Meruit* **Claim**

To establish a claim for *quantum meruit* or unjust enrichment, a plaintiff must plead facts showing (1) the existence of a benefit conferred on the defendant by the plaintiff; (2) appreciation of the benefit by the defendant; and (3) acceptance and retention of the benefit under circumstances that create an inequity. *J.F. Walker Co., Inc., 792 A.2d at 1273*. The complaint brings claims for *quantum meruit* against both Sunku and Wipro.

Defendants are correct to assert that plaintiff cannot state a claim for unjust enrichment against Sunku. Sunku is a party to the agreement with Surya, and a claim for *quantum meruit* is inapplicable when the parties' relationship is founded on an express contract. *See Benefit Trust Life Ins. Co. v. Union Nat'l Bank*, 776 F.2d 1174, 1177 (3d Cir. 1985) (citing Pennsylvania cases holding that the existence of the right to recover on the promise precludes a claim of unjust

enrichment). Plaintiff's unjust enrichment claim against Sunku must therefore be dismissed with prejudice.

Defendants argue that plaintiff has also failed to state a claim for unjust enrichment against Wipro, because plaintiff has not alleged that it provided services directly to Wipro. Such an allegation is not necessary, however, to sustain plaintiff's claim. To sustain a claim of unjust enrichment, a claimant must show that the party against whom recovery is sought either wrongfully secured or passively received a benefit that it would be unconscionable for the party to retain. *Torchia v. Torchia*, 499 A.2d 581, 582 (Pa. Super. 1985). Surya argues that, by hiring Sunku permanently, Wipro unfairly received the benefit of Surya's substantial investment in the development of its network of skilled software consultants, of whom Sunku was one–presumably until he was hired away by Wipro. Surya maintains that it would be inequitable for Wipro to reap the benefits of Surya's cultivation of Sunku without compensating it for those benefits. Having alleged the required elements of the cause of action, Surya has stated a valid claim of unjust enrichment against Wipro, at least for purposes of a motion to dismiss.

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Defendants	:	
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Order

AND NOW, this _____day of June, 2005, upon consideration of defendants' motion to

dismiss the complaint for failure to state a claim upon which relief can be granted and plaintiff's

brief in opposition to defendants' motion, it is hereby ORDERED that the motion is GRANTED

as to Count I (breach of contract) against Wipro.; Count II (tortious interference) against Sunku;

and Count III (unjust enrichment) against Sunku. The motion is DENIED as to Count I (breach of

contract) against Sunku; Count II (tortious interference) against Wipro; and Count III (unjust

enrichment) against Wipro.

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William H. Yohn, Jr., Judge